

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, JANUARY 21, 2004**

**C-1     CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of January 21, 2004, was called to order by Mayor Hansen at 5:48 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Deputy City Attorney Schwabauer, and City Clerk Blackston

**C-2     ANNOUNCEMENT OF CLOSED SESSION**

- a) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Pending Litigation – Eminent Domain acquisition of 15 West Elm Street, Lodi, CA; the negotiating parties are City of Lodi and Frank Hall, Owner; Government Code §54956.8

**C-3     ADJOURN TO CLOSED SESSION**

At 5:48 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:12 p.m.

**C-4     RETURN TO OPEN SESSION / DISCLOSURE OF ACTION**

At 7:18 p.m., Mayor Hansen reconvened the City Council meeting, and Deputy City Attorney Schwabauer disclosed the following actions:

In regard to Item C-2 (a), Council was updated on the current status of the litigation. No reportable action was taken.

In regard to Item C-2 (b), staff requested and was granted settlement authority.

**A.     CALL TO ORDER / ROLL CALL**

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Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Deputy City Attorney Schwabauer, and City Clerk Blackston

**B.     INVOCATION**

The invocation was given by Reverend Michael Voytek, Providence Reformed Church.

**C.     PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Hansen.

**D.     AWARDS / PROCLAMATIONS / PRESENTATIONS**

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Mary Goad and Courtney Cook, members of the Greater Lodi Area Youth Commission, recognized the Teen of the Month, Seamus Gormly from Tokay High School, and provided an update on the Commission's accomplishments.

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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Beckman, Howard second, unanimously approved the following items hereinafter set forth:

- E-1 Claims were approved in the amount of \$3,710,451.30.
  - E-2 The minutes of December 16, 2003 (Shirtsleeve Session), January 6, 2004 (Shirtsleeve Session), January 6, 2004 (Special Meeting), January 13, 2004 (Shirtsleeve Session), January 13, 2004 (Special Meeting, 7:00 a.m.), January 13, 2004 (Special Meeting, 5:30 p.m.), and January 13, 2004 (Adjourned Special Meeting, 5:30 p.m.) were approved as written.
  - E-3 Set public hearing for February 18, 2004, to consider Reimbursement Agreement RA-03-04 establishing an area of benefit and reimbursable costs for developer-funded public improvements for the Harney Lane sanitary sewer lift station and sanitary sewer trunk line.
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Mark Olkowski reported that he was formerly employee 3911 of the Electric Utility Department. After seven years in the position of lineman with the Utility, on November 1, 2002, he was forced to retire. His career as a lineman spanned 33 years. Mr. Olkowski alleged that the following incidences occurred and requested that Council investigate them:
  - Contaminated dirt was brought into the City to fill up ditches, pole holes, etc;
  - There is a disregard for City and OSHA rules at the Utility;
  - Money has been wasted on equipment that has not been used for many years;
  - Employees who were habitually late have been promoted;
  - The City Manager informed him that though his zeal for safety was greatly appreciated, it might be better appreciated elsewhere;
  - A Utility supervisor told Mr. Olkowski to flunk a black lineman, which he indicated was based on race, not competency; and
  - Employees without proper training or experience have destroyed equipment and public property when working on backhoes; Mr. Olkowski brought this up repeatedly at safety meetings; however, it was never recorded in the minutes.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider resolution authorizing the reallocation of \$50,000 of unobligated Community Development Block Grant funds to the Salvation Army.

Community Development Director Bartlam recommended that Council approve the reallocation of unobligated Community Development Block Grant (CDBG) funds for the Salvation Army's Hope Harbor project at 622 N. Sacramento Street. He recalled that a couple of years ago an obligation was made by the City to fund \$250,000 toward the project, payable at \$50,000 a year over a five-year period. In October 2003, the Housing and Urban Development Department, through an initiative by President Bush, revised a long-standing rule, which previously prohibited Block Grant funds being used for faith-based organizations. Due to this revision, the City can now consider CDBG funds for the shelter project. Unobligated CDBG funds are available from the completed Lodi Lake Trail project.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Land, Howard second, unanimously adopted Resolution No. 2004-14 authorizing the reallocation of \$50,000 of unobligated CDBG funds from a completed project to the Salvation Army.

- G-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider resolution adopting Engineer's Report, confirming the assessments, overruling protests and declaring assessment ballot results and annexing territory to a maintenance assessment district and forming zone 2 (Century Meadows One Zone 2 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1).

Wally Sandelin, City Engineer, reported that the developer of the Century Meadows One, Units Two and Three Subdivision, Tract Nos. 2786 and 3289, has asked the City to form Zone 2 of the Consolidated Landscape Maintenance Assessment District. The district will fund the maintenance of reverse frontage wall and landscape improvements, interior street tree maintenance, as well as a prorated share of public park improvements.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

City Clerk Blackston reported that she had received the assessment ballot cast in the special assessment mailed ballot procedure as called by Council in its Resolution 2003-227 adopted on December 3. In accordance with the instructions contained in that resolution, she declared the balloting closed and certified the results of the tabulation to be as follows:

Total assessment ballots cast YES	\$40,565
Total assessment ballots cast NO	Zero

Ms. Blackston explained that the assessment ballots are weighted according to the proportional financial obligation the affected property has to the total assessment amount, which means one vote for each one dollar of assessment. The assessment ballots cast "yes" equal 100% of the total assessment ballots cast.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously adopted Resolution No. 2004-15 adopting Engineer's Report, confirming the assessments, overruling protests and declaring assessment ballot results and annexing territory to a maintenance assessment district and forming zone 2 (Century Meadows One Zone 2 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1).

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Land, Beckman second, unanimously directed the City Clerk to post for the following vacancies:

Lodi Arts Commission

Sherri Smith Term to expire July 1, 2006

Parks and Recreation Commission

Victor Schuh Term to expire December 31, 2004

H-4 Miscellaneous

- a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through December 31, 2003.

I. REGULAR CALENDAR

I-1 "Adopt resolution approving the use of Lodi Lake by BoardStock Promotions, Inc."

Parks and Recreation Director Goehring reported that the date for the proposed BoardStock event has been changed to October 9 and 10. Rob Stimmel, BoardStock President, has described the event as a one of a kind hybrid "X Games," which features wakeboarders, freestyle MotoX riders, skydivers, and live music. BoardStock began in 1996 at Lake Shasta and in 2000 it moved to the deep-water channel in Stockton. Mr. Goehring pointed out that the event would generate rental revenue and give Lodi worldwide media exposure. The Recreation Commission unanimously approved the proposal on December 2. On December 18, a meeting was held with Mr. Stimmel and various agencies in the community, and City staff to address questions and concerns related to the proposed event. Mr. Goehring mentioned that he would be 60 years old in four months and recalled his experiences at Lodi Lake during his youth. He noted that hydro race boats were at the lake every 4<sup>th</sup> of July, there were water skiing exhibitions at various times, and a ski jumping platform was in the middle of the lake. Since that time the Lake has become a more passive venue; however, he recommended a return of more active recreational events. To address concerns by the Friends of Lodi Lake group, Mr. Goehring reported that the nature area would be locked and inaccessible to the public during the time of the BoardStock event. In addition, logs would be placed at the mouth of the Lake so there could be no entry from the river into the Lake.

In answer to Council Member Hitchcock, Mr. Goehring stated that the city of Stockton had not reported any problems about the BoardStock event.

Steve Whyte of Whyte House Productions spoke on behalf of the owners of BoardStock who could not be present due to business commitments. Mr. Whyte noted that he has been involved in special events in Lodi for many years. His company has helped to produce the Oooh Aaah 4<sup>th</sup> of July event for the past 12 years, the Kids' Night Out event on New Years Eve for the past 5 years, and he donates services to the Chamber of Commerce to assist it with the Street Faire twice a year. The owners of BoardStock have hired Whyte House Productions to assist them with event operations, local and regional sponsorship sales, advertising, and promotions. BoardStock is televised worldwide. Promoters will be paying for police services, rental of the lake, site preparation, and private security. BoardStock has insurance that exceeds requirements. Mr. Whyte stated that there were no problems with the event in Stockton. Stockton estimated that there was at least \$250,000 in economic impact related to the event. The owners of BoardStock are looking for another venue because of redevelopment that is taking place in the downtown Stockton area.

In answer to Council Members' inquiries, Mr. Whyte reported that there would be six to eight food vendors, boat manufacturers, motocross bike dealers, Nor Cal Beverage, and Anheuser Busch. Mr. Whyte reiterated that no problems have been experienced at previous events. The event will be held from 11:00 a.m. to 6:00 p.m. There will be two showings per event. He stated that the motorboats are very quiet and there are no more than two boats in the water at any time. At last year's Stockton event, there were eight uniformed police officers on site. Over the two-day period, 2,700 attendees are expected.

Police Lieutenant Somera reported that the Stockton Police Department confirmed that it had not experienced any problems with the BoardStock event. He stated that a Sheriff's boat with one Lodi Police Officer would patrol the area in addition to other Police Officers at the event. Police would control all the beverages entering the park.

In response to City Manager Flynn, Mr. Whyte stated that set up and take down would require two days prior and two days after the event; however, the park would not need to be closed during this time.

PUBLIC COMMENTS:

- Levi Goehring stated that he has lived in Lodi for 35 years. He was opposed to the BoardStock event because of the negative impact to the environment and the type of people it might draw.
- Michael Fluetsch stated that his home backs up to the nature trail at Lodi Lake. He pointed out that Lodi Lake and the nature trail are located in the middle of a residential neighborhood and events scheduled at that venue directly affect all of the families living nearby. He was strongly opposed to the BoardStock event or any other use of the Lake that creates loud noise and spoils the serene nature setting. He suspected that the revenue figures projected were over inflated and would profit outside companies, rather than the Lodi community.
- Richard Thornton was opposed to the BoardStock event and loud motorboats on the lake at any time.
- Bob Padden, member of the Friends of Lodi Lake and docent at the nature area, expressed concern about parking. He feared that this would set a precedence for more events of this type at the lake, which he opposed.
- Ron Gritsch recalled that when a boating-related tragedy occurred in the river, rules were set in place, which prohibited boat towing. He believed the exhibitions that would be occurring at BoardStock are in contradiction to the regulations. He reported that his nephew attended the event in Stockton last year and had his vehicle flipped over. It attracted a "party like" atmosphere with mainly 18 to 25 year olds. He expressed concern about what would happen in the evening after the event concluded and speculated that many would go downtown to drink. He did not believe that Lodi Lake was a good fit for the event.
- Nancy Beckman, Executive Director of the Lodi Conference and Visitor Bureau, expressed support for the event. She believed it would be a tourist attraction that would infuse hundreds of thousands of dollars into the Lodi community in just one weekend. She pointed out that some of the money would go into the City's general fund to help support City services, parks, etc.
- Pat Patrick, Chamber of Commerce President, stated that he attended the meeting on December 18, and since that time, has supported the BoardStock event being held at Lodi Lake. He expressed confidence in the Parks and Recreation Department to preserve the integrity of the Lake and in the Police Department to keep it safe. He reported that a survey of the annual Crane Festival attendees showed that 76% came from outside San Joaquin County, 50% ate in Lodi restaurants, 15% stayed in a Lodi hotel or motel, 11% went shopping after the event, and 20% purchased gasoline in the City.

- Winifred Mitchell reported that while at Lodi Lake this afternoon she was approached by Channel 40 News and she and several others were asked if they were aware of the BoardStock topic being on the City Council agenda. They played a video from the 2000 Stockton event, which showed hard liquor being mixed and served, girls in thong bikinis, and provocative dancing. Ms. Mitchell was opposed to the event and stated that it would not be appropriate for families.
- Donna Phillips stated that she has lived adjacent to Lodi Lake for 21 years. She read the mission statement of Friends of Lodi Lake, "To enhance and preserve the natural beauty and tranquility of Lodi Lake for present and future generations." She recalled that there have been three studies of Lodi Lake done and all three recommended that motorization be removed from the park as well as great amounts of blacktop. Ms. Phillips showed various maps of the park on an overhead projector. She stated that there is no approved plan for the park and recommended that its use be defined. She reported that last year when there were boat races at the park a stabbing took place in front of her home and someone was shot on the Westside. She noted that the wind in Lodi predominantly blows west to east, so whatever happens at the Lake impacts the neighborhood. She encouraged Council to vote against the proposal.
- Cara Gritsch believed that BoardStock should be given a chance, as it is only a two-day event, and if it turns out to be troublesome they will not be invited back next year.
- Glenda Wall stated that before a person moves into a neighborhood it is incumbent upon them to look at what is around them and consider how they might be impacted by it. Ms. Wall stated that she has attended BoardStock, as well as her 18 year old son, who described it as boring because there was nothing to do in between events. She supported the event and urged Council to approve the proposal.

In answer to Mayor Hansen, Mr. Goehring stated that parking would take place on the 13 acres west of the lake.

Mayor Hansen agreed with Ms. Phillips that the City should get community input and establish parameters for Lodi Lake Park. He suggested that this topic be added to the public survey that is currently being created.

Council Member Hitchcock suggested that Council go outside to the news van and view the digital recording of BoardStock.

Mayor Pro Tempore Beckman objected to the idea of Council obtaining information that was not part of the open public discourse.

Deputy City Attorney Schwabauer expressed concern with Council Members, in effect, changing the venue of the meeting by going outside to receive additional information, which would be used to make a decision on a topic now under consideration.

Council Member Howard was also opposed to the suggestion of Council leaving the meeting location as posted. Such an action would set a precedence for someone at any time during a meeting to ask Council to go outside to receive additional information. The time and place for Council to receive information is set and should not be altered.

## RECESS

At 9:20 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 9:30 p.m.

I. REGULAR CALENDAR (Continued)

- I-1 Mayor Hansen noted that Council has received two "blue sheet" communications (both filed), one from Robert Raingruber in opposition to BoardStock and one from Russ Richenberg in support of the event.

In response to Mayor Pro Tempore Beckman, Mr. Whyte stated that the promoters of the event take the concerns and opinions of affected agencies very seriously. From past experience he believed that the athletes were of good character. He pledged that the same care and professionalism in producing the event would take place at Lodi Lake, as it had in the past.

Mayor Pro Tempore Beckman stated that he was born in Lodi as was his father, grandfather, and great grandfather. The Beckman family first came to Lodi in 1850. He has watched many acres of vineyards in this community removed to make room for residential development. He had often thought that if Lodi was its own country, its citizens would probably want to build a wall around it to keep it from changing. He pointed out that people can, and will, keep coming into the community because of immigration and other reasons. It appears that Lodi is trying to decide whether it is a small town or a twenty first century city. The City has a two percent growth ordinance. The community has expressed a desire for projects such as DeBenedetti Park (\$10 million), an aquatics center (\$7 million), an indoor sports center (\$10 million), and a greenbelt area, which will be a significant expense either through purchase of development rights or land. Sales tax would be one revenue source; however, community members have expressed opposition to "big box" stores. Tourism is a way to both increase revenue and remain a small community, because it attracts people in to spend their money and depart afterwards. He noted that it is often only a relatively small number of surrounding residents that express their opinions. Before decisions are made that affect the entire community, it is important to know what the majority of citizens desire. He suggested that proponents for not having events at parks or those that wish to limit the size of retail stores start a petition drive and find out how many others feel the same way. He stated that if each group were able to gather 2,000 signatures he would support the issues as well. In the meantime, unless he hears from a significant number of people in opposition, he would not vote to prohibit them. He recommended that BoardStock be given a chance.

Council Member Hitchcock disclosed that during the break she went outside to view the BoardStock video in the news van and did not see anything that concerned her. She believed that Lodi Lake had become a more passive park over the years because of general community input and from groups such as the Friends of Lodi Lake. Ms. Hitchcock expressed her opinion that the lake is a natural resource and asset that should be protected for future generations. Each facility in the City is unique and should have activities that are compatible with it. She believed that BoardStock would benefit outside promoters more than the Lodi community itself.

Council Member Howard preferred that Lodi Lake remain a passive venue.

Mayor Hansen expressed concern regarding concepts or decisions that are exclusionary. He felt that the BoardStock event would be similar to what occurs at the Lake every 4<sup>th</sup> of July and was confident that it would be well run and supervised. He too wished to know, from a community perspective, what type of use people would like to see at the Lake and suggested that this be added to the public survey that is currently being created and perhaps also as a specific topic Council should address.

MOTION #1 / VOTE:

Mayor Hansen made a motion, Beckman second, to adopt a resolution approving the use of Lodi Lake by BoardStock Promotions, Inc., for its first annual event to be held October 9 to 10, 2004.

DISCUSSION:

Council Member Land was in favor of all the activities of BoardStock with the exception of the freestyle MotoX riders, which he felt was too extreme for the venue.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Beckman and Mayor Hansen

Noes: Council Members – Hitchcock, Howard, and Land

Absent: Council Members – None

MOTION #2 / VOTE:

The City Council, on motion of Council Member Land, Beckman second, adopted Resolution No. 2004-16 approving the use of Lodi Lake by BoardStock Promotions, Inc., for its first annual event to be held October 9 to 10, 2004, excluding the freestyle MotoX riders. The motion carried by the following vote:

Ayes: Council Members – Beckman, Land, and Mayor Hansen

Noes: Council Members – Hitchcock and Howard

Absent: Council Members – None

NOTE: The remaining items were discussed and acted upon out of order.

- I-3 “Discussion and possible action regarding the positions of Interim City Attorney and City Attorney and the retention of special counsel to advise and assist the City Attorney’s Office as assigned”

Mayor Hansen offered three options for Council to consider: 1) the Deputy City Attorney can serve in the capacity of Interim City Attorney, 2) an attorney from the firm of Kronick Moskowitz Tiedemann & Girard (KMTG) could serve as Interim City Attorney, or 3) the Deputy City Attorney can serve as Interim City Attorney with assistance provided by KMTG. He recommended option three.

City Manager Flynn recommended that, if Deputy City Attorney Schwabauer is appointed to serve in the capacity of Interim City Attorney, his salary should be increased to Step A of the City Attorney salary range, or given a 10% increase over his current salary.

MOTION #1 / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Land second, unanimously 1) appointed Deputy City Attorney Stephen Schwabauer as Interim City Attorney until such time as a City Attorney is hired and that his salary be increased to Step A of the City Attorney’s salary range; and 2) authorized that a contract be entered into between the City of Lodi and the law firm of Kronick Moskowitz Tiedemann & Girard to serve in the capacity of Deputy City Attorney to the Interim City Attorney until such time as the City selects special counsel to resume the Environmental Abatement Program litigation.

Mayor Hansen reported that he had been informed by Human Resources Director Narloch that a headhunter firm would charge \$10,000 to \$25,000 to recruit a city attorney. Ms. Narloch believed that there would be a large pool of candidates to draw from through the standard recruiting practices. Mayor Hansen suggested that, because of the importance of the position, Council should have a lot of input in the process. He offered that two Council Members review the applications, and the testing process take place before a panel of members of the community and Council.

Council Member Hitchcock cautioned Council not to get too involved in the selection so that a political process is avoided. She believed that the Human Resources Department was qualified to do the initial paper screening and pick out the best applicants. Following that, Council should have the opportunity to see all the applications and those that Human



Resources selected. The testing process should involve city attorneys from other cities. Council could then interview a group of 10 to 12 candidates who placed highest.

City Manager Flynn suggested having city attorneys from other cities do the initial screening to choose 20 or 25 who are best qualified. From that group an assessment panel consisting of community members and department heads could narrow the candidates down to 10 or 12 for Council to interview individually.

Human Resources Director Narloch suggested that the process be evaluated as the recruitment progresses. Screening methods should be determined once the total number of candidates is known.

Mayor Hansen preferred that, no matter what the number of candidates is, a panel consisting of community members, city attorneys, and department heads be used in the screening process.

Council Member Hitchcock suggested that the recruitment period be 45 to 60 days and advertisements for the position be published in the League of California Cities *Western Cities* magazine and other publications specific to city attorneys.

Interim City Attorney Schwabauer stated that, with Council's permission, he would post the opening on the city attorneys' listserve, which can deliver an e-mail message to virtually every city attorney in California.

#### MOTION #2 / VOTE:

The City Council, on motion of Mayor Hansen, Hitchcock second, unanimously authorized the City Manager to: 1) advertise for the position of City Attorney, 2) develop a recruitment/testing process to be brought back to Council for final approval, and 3) begin the recruitment immediately and for a period of 45 to 60 days.

Mayor Hansen recalled that he and Council Member Hitchcock had previously begun interviewing attorneys for the purpose of selecting a firm to get a second opinion on the Environmental Abatement Program, and subsequently changed direction to retain a legal firm to audit the billings of Envision Law Group. Now Council needs to refocus back to the original task and retain legal representation to carry the City through the upcoming litigation, mediation, etc. Mayor Hansen suggested that he and Council Member Hitchcock pursue the matter and that a Request for Proposal (RFP) process be conducted.

Council Member Howard recommended that Council authorize the City Manager to post for the hiring need for a 30-day period and then have the Interim City Attorney, City Manager, Deputy City Manager, and others familiar with the subject, such as retired Water/Wastewater Superintendent Fran Forkas, participate in an interview process for the initial screening. Following that, Council could interview eight of the most qualified firms.

Mayor Pro Tempore Beckman supported the notion of Mayor Hansen and Council Member Hitchcock conducting the initial screening. Mr. Beckman commented that he would like to be notified as the process evolves, however, and informed how many proposals are received, etc.

Council Member Hitchcock believed that Council needed to be involved in the process and she was uncomfortable with the suggestion of turning it over to, or upon, staff.

#### PUBLIC COMMENTS:

- In response to Mayor Hansen, Dan O'Hanlon of KMTG stated that there were not a lot of firms that would be well suited to handle Lodi's Environmental Abatement Program litigation. He stated that the City needed someone with expertise in environmental law,

insurance coverage litigation, and experience representing public agencies. He advised Council to consider whether it would be wiser to have a single firm do both the environmental cleanup litigation and the coverage side, or divide this between two firms who are experts in each field.

Council Member Land was in agreement with Mayor Hansen and Council Member Hitchcock conducting the initial screening process. He expressed concern with timing and key dates that need to be addressed, specifically on February 12. He read from the January 12, 2004, court transcript in which Judge Damrell stated, *"In that light, when you move to vacate the trial, I'm going to suggest that you consider vacating your litigation strategy... if the City stipulates that it will not offer evidence of this 107 (b) defense, obviously, the Court can enter an appropriate order and the trial will be vacated. If that were to happen, I foresee a prompt resolution of this entire litigation. There's no reason why the State cannot proceed as lead agency. I know it's engaged in that role to a certain extent right now and I don't know the extent it would change if Lodi were no longer seeking to impose joint and severable liability, but I assume the State would take complete control over this matter, which I think it should."*

Council Member Land reported that there were 15 businesses, identified through Henshaw Services with the concurrence of the State Department of Toxic Substance Control (DTSC), that have polluted not only the ground, but the water in Lodi. Henshaw Services has reported that the area of pollution ranges north to Turner Road, down the Southern Pacific Railroad, east to Cherokee Lane, west to Sunset Drive, and just before Century Boulevard to the south. Mr. Land stated that he did not think the City of Lodi or Council could do a job like DTSC could. He recalled that the reason the City took over the litigation was because businesses came to the Council begging for relief from DTSC. These same businesses accepted and endorsed the City's subsequent litigation strategy. There were signatures from businesses that accepted this responsibility, and since then, a majority of those businesses have turned against the City. The City also received an endorsement on its legal strategy at the Annual Conference of Mayors held in San Francisco on June 20-24, 1997. He asked that research be done to locate a copy of the endorsement.

Council Member Land explained that there were three sources of funding: 1) from citizens of Lodi through the City's Water Fund; 2) \$15.7 million loaned from Lehman Brothers; and 3) Envision Law Firm. He reported that the City has spent \$6.3 million to date from the Water Fund, of which \$1 million was received back from insurance companies. One million dollars was paid to the State of California so that the City could take over as the lead agency. The Lehman Brothers loan was to help litigate the Municipal Environmental Response and Liability Ordinance. The first claim was filed against the City's own insurance carrier (USF&G) on October 14, 1997. It took almost six years and a court order for USF&G to agree to pay for defense costs. The current trial that the City is proceeding in is a defense trial. All the costs for the litigation were being paid by the City's insurance. Envision Law Group had billed the City for accrued charges; however, the City had not been paying them. The only way that Envision Law Group would collect on the accrued bills was if they were successful in the litigation, after which insurance companies would pay for them. The same situation existed for the repayment of the Lehman Brothers loan, i.e. they would have been paid only if the City prevailed in the litigation. Mr. Land asked where the money will come from for the new legal team the City is attempting to retain.

Mayor Hansen replied that USF&G would be paying for the defense costs. He mentioned that a meeting would be taking place with them on Friday, and if they brought up any issue about it, he would report back to Council. The matter of whether or not the City is going to vacate its legal strategy will be addressed in an upcoming status report that the Judge has requested. KMTG will be assisting the City with meeting near-term deadlines. He did not believe that the City was ready at this point to abandon the original decision/strategy of trying to protect the businesses, or that of going after the pool of money that has been

identified from insurance companies on the indemnity side to pay for the cost of cleanup. He acknowledged that the situation with Lehman Brothers is uncertain.

Council Member Land stated that it had been explained to him that, under the strategy, if the City prevailed then the business owners' insurance companies would be held liable for the damages. Henshaw Services told him that the clean up could cost anywhere from \$150 million to \$200 million.

Mayor Hansen reported that today he was told by Henshaw Services representatives that the clean up would cost between \$29 million to \$117 million.

Council Member Land recalled that never during his seven years on the Council did anyone ever estimate the cleanup at \$29 million. It was his understanding that if the City was not successful in the litigation then the City's own insurance companies would pay for the damages. He recalled that the City prevailed in every court until approximately one year ago. He believed that the past Council made a wise decision in the legal strategy it pursued, however, perhaps not in the selection of the attorney it hired, who Mr. Land pointed out had already been introduced to Council prior to his first term as a Council Member in 1996.

Interim City Attorney Schwabauer reported that on February 6 the City must decide in a status report to Judge Damrell what its preparedness is to go to trial on the 107 (b) defense, or whether to waive it.

Council Member Hitchcock explained that DTSC or the State Water Resources Board can only issue administrative actions; the City has to do the enforcement action. She believed that Council had been misinformed and lied to at times by its legal representation throughout the past years of litigation. She felt that the City should change its strategy because it has not brought any money toward cleanup of the pollution. The City does need to hire a highly qualified legal firm, however, because the City is responsible for the enforcement action that would go along with the administrative action by the State. She believed that the City's direction should be to look toward how it can get out of this situation by assuming whatever responsibility its part is, settling, and getting the cleanup accomplished.

Mayor Pro Tempore Beckman expressed support for the RFP process and suggested that perhaps two firms be retained, one expert in the insurance coverage issue and one in environmental law. He believed that the current strategy still has merit and was not ready to abandon it. He noted that his major concern has always been the cost related to it.

MOTION #3 / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously authorized Mayor Hansen and Council Member Hitchcock to develop a Request for Proposals for special counsel to represent the City of Lodi in its Environmental Abatement Program litigation and to interview applicants as appropriate; and that each Council Member will be allowed to make a recommendation of a legal firm for consideration.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Council Member Land, Beckman second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

I. REGULAR CALENDAR (Continued)

- I-5 "Adopt resolution authorizing the City Manager to provide a Public Benefits Program grant to fund Lodi's 2<sup>nd</sup> annual *Get Green Weekend* event (not to exceed \$25,000)"

Electric Utility Director Vallow announced that the second annual Get Green Weekend would be held on March 13 from 7:00 a.m. to noon in the parking lot of Temple Baptist Church to promote several products designed to improve air quality and save water. He requested approval of the project as a qualifying component of the Public Benefits Program in the categories of Research, Development & Demonstration Services, and Renewable Energy Resource & Technologies.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously adopted Resolution No. 2004-17 authorizing the City Manager to provide a Public Benefits Program grant to fund Lodi's 2<sup>d</sup> annual *Get Green Weekend* event in an amount not to exceed \$25,000.

RECESS

At 11:20 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 11:30 p.m.

I. REGULAR CALENDAR (Continued)

- I-2 "Update from Mayor Larry Hansen regarding audit (agreed-upon procedures) of Envision Law Group's billings"

Mayor Hansen reported that the audit by Barger & Wolen of Envision Law Group's billings is progressing. They have spot checked an 8-month and 15-month period and given some preliminary information about discrepancies. They have reviewed the Lehman Brothers agreement to assist the City in preparation of the status report that is due on February 6. Barger & Wolen will prepare a final report that will identify issues that the Council will then need to make decisions on in terms of how to pursue it and whether or not to go into arbitration.

Interim City Attorney Schwabauer interjected that just because a contract from an attorney says that disputes must be resolved by arbitration, does not necessarily mean that it is the only recourse.

MOTION / VOTE:

There was no Council action necessary on this item.

- I-4 "Discussion and action regarding Phase II budget adjustment options"

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously moved this item to the meeting of February 4, 2004.

J. ORDINANCES

- J-1 Following reading of the title of Ordinance 1741 entitled, "An Ordinance of the City Council of the City of Lodi Repealing and Reenacting Lodi Municipal Code Sections 12.06.070 'Exclusions from Benefit Fees,' 12.06.090 'Collection of Benefit Fee,' and 3.01.460 'Enforcement' Relating to Exclusions, Collection, and Enforcement of Various Fees," having been introduced at a regular meeting of the Lodi City Council held January 7, 2004, the City Council, on motion of Council Member Hitchcock, Beckman second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen  
Noes: Council Members – None  
Absent: Council Members – None  
Abstain: Council Members – None

J-2 Following reading of the title of Ordinance No. 1742 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 9 – Public Peace, Morals and Welfare, Chapter 9.08 'Offenses Against Property' by Repealing and Reenacting Section 9.08.150 of the Lodi Municipal Code Relating To Vehicles," having been introduced at a regular meeting of the Lodi City Council held January 7, 2004, the City Council, on motion of Mayor Pro Tempore Beckman, Hitchcock second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen  
Noes: Council Members – None  
Absent: Council Members – None  
Abstain: Council Members – None

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Hitchcock thanked Mayor Hansen for all the work he had done over the past few weeks and expressed her gratitude for the time he has devoted.
- Council Member Howard announced that she would not be seeking reelection this year, as she was expecting a baby this summer. Ms. Howard recalled that when she was a Council candidate she wanted to serve the community because she recognized so much good that is in Lodi and she continues to feel the same way. She expressed hope that whatever candidate ultimately fills her vacancy that they campaign with enthusiasm, appreciation, and a vision of all the positive things that this community projects.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced that he attended the Martin Luther King Jr. Day Unity Celebration on January 19, at which Mayor Hansen and Council Member Hitchcock gave presentations. He noted that it was the first time the City of Lodi recognized the holiday by closing City Hall.

M. ADJOURNMENT

There being no further business to come before the City Council, Mayor Hansen adjourned the meeting at 11:46 p.m., in memory of Private First Class Jesse Mizener, 23 years old, who was killed in Iraq on January 7 during a mortar attack on Logistics Base Seitz, west of Baghdad; his grandmother is Peggy Mizener of Lodi.

ATTEST:

Susan J. Blackston  
City Clerk